

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3453 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge

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PRATIMABEN RAMESHBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR HARESH J TRIVEDI for Petitioner  
Ms.Harsha Devani, A.G.P. for Respondent No. 1 & 2  
MR SD PATEL for Respondent No. 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 31/08/1999

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition is for issuing direction in the nature of mandamus directing the respondent No.1 to take action against the respondent No.2 for not performing his statutory duties under the Urban Land (Ceiling & Regulation) Act, 1976 (for short "the Act") in the matter of Scheme No.842 of the Act and for complete breach of

conditions laid down and for declaration of rejection of the scheme. There is further prayer that the respondent No.3 be directed to allot one dwelling unit in the scheme to the petitioner at the price specified under the law.

2. The averments made in the writ petition are that the respondent No.3 is a land owner/builder and developer doing the business of society organizer in the name and style of Shreeji Developers. The respondent No.2 is competent Authority who has sanctioned the scheme under Section 21(1) of the Act in the land measuring 4825 sq.mtrs. of Survey No.385 of village Tandalja near Vadodara vide order dated 22.5.1992. The respondent No.3 was allowed to construct residential units of specified constructed area at a fixed price. The petitioner coming to know of the scheme submitted an application dated 4.8.1995 to the competent Authority, viz. to the respondent No.2 to allot her one dwelling unit in the said scheme. The said respondent failed to give any reply to the application of the petitioner. Notices were sent through Advocate to the respondents No.1 & 2, but with no result. The respondent No.1 has also failed to take any action against the respondent No.2 or the organizer builder, the respondent No.3. It is alleged that the respondent No.3 has committed serious breach of the conditions laid down while sanctioning the scheme. The respondent No.3 was bound to publish the details of the scheme through public advertisement in the local news paper so as to reach the information regarding the scheme to the knowledge of economically weaker sections of the society. The respondent No.3 committing breach of this condition allotted the units to prosperous members of the society charging huge amount in breach of the fixed price and conditions under the scheme. It was alleged that the respondent No.3 had allotted block No.39, type "D" to one Kiranbhai Chhotalal Joshi by charging exorbitant price from him. It was also alleged that the said Shri K.C. Joshi does not fall within the definition of the members of economically weaker section of the society rather he is a Post Master at Fatepura Post Office, Vadodara and is a Gazetted Central Government Officer having income of Rs.1 lac per annum. The action of the respondent No.3 in admitting such person to the scheme is violative of Section 21(1) of the Act. The petitioner approached the higher Authorities of the State Government, but with no result, hence this petition.

3. No Counter Affidavit has been filed by the respondents No.1 & 2. Counter Affidavits have been filed on behalf of the respondent No.3 and also by Kiranbhai Chhotalal Joshi.

4. Learned A.G.P. representing the respondents No.1 & 2 has argued that the application for allotment of unit should have been made by the petitioner to the respondent No.3, namely, the Organizer in the scheme. It was argued that the respondent No.2 simply sanctioned the scheme and the matter of allotment was to be undertaken by the respondent No.3 and since no application was given by the petitioner to the respondent No.3 her claim could not be entertained. Shri S.D.Patel representing the respondent No.3 also contended that no application was given by the petitioner to the respondent No.3.

5. Regarding alleged breaches of conditions in the scheme one of the allegations is that publication was not made in the local news paper. For this some reply has been given in Para : 1 of the Counter Affidavit filed by Paresh N. Shah on behalf of the respondent No.3. He has deposed in his Affidavit that publication of scheme was adequately made at the spot, signed Board having all the necessary details was fixed on the site in the month of March, 1993 and within a week of affixing the sign Board between 35 to 37 applications were received and these units were booked. It is also informed that only 40 units were available and that on the date when the interim order was passed by this Court, namely, on 8.5.1996 no vacant unit was available for being allotted to the petitioner. If all the units were allotted to the eligible members of the society by publication on the sign board at the site it can be said that it was mere irregularity in not giving advertisement in the local news paper and not any breach of conditions. More over when the petitioner did not move application before the organizer, namely, the respondent No.3 her claim could not be considered for allotment of unit in the scheme.

6. So far as the allegation regarding Unit No.39 is concerned it is stated in Para : 6 of the petition that it was allotted to one Kiranbhai Chhotalal Joshi, a Post Master drawing annual salary of Rs.1 lac. In the counter Affidavit of Paresh N. Shah it is mentioned that the annual income of Shri Kiran C. Joshi was Rs.20,000/- and a person having such annual income was eligible for allotment of unit under the Scheme. Photo Copy of Affidavit of Shri Kiran C. Joshi was also filed along with this Affidavit and a seperate Affidavit of Kiran Chhotalal Joshi dated 16.7.1996 has also been filed indicating the same. Not only that, allotment has been made in favour of Kiran Joshi but possession has already been delivered to him which is borne out from two Counter Affidavits on record. The possession was actually

delivered to Kiran Joshi on 20.3.1996 as is evident from his Affidavit dated 16.7.1996. It, therefore, confirms that on 8.5.1996 when the interim order was passed by this Court reserving one unit in favour of the petitioner actually no unit was available inasmuch as the only unit left, namely, Unit No.39 was allotted and handed over to Shri Kiran Joshi on 20.3.1996.

7. Since the matter of allotment was not to be undertaken by the respondent No.2 it can hardly be said that this respondent committed any breach of duty u/s.21(1) of the Act. As such no direction is required to be given to the respondent No.1 for taking any action against the respondent No.2. In the absence of application for allotment to the respondent No.3 no direction can be given to him to allot one unit to the petitioner. More over since no vacant unit is available for allotment no direction for allotment to the respondent No.3 can be given in favour of the petitioner.

8. For the reasons given above there is no merit in this petition which is hereby dismissed with no order as to costs.

sd/-

Date : August 31, 1999 ( D. C. Srivastava, J. )

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